

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27
28
29

ORDINANCE NO. 2019-05

**AN ORDINANCE OF THE VILLAGE COMMISSION OF
THE VILLAGE OF BISCAYNE PARK, FLORIDA,
AMENDING CHAPTERS 14 AND 15 OF THE LAND
DEVELOPMENT CODE OF THE VILLAGE OF
BISCAYNE PARK; AUTHORIZING SPECIAL
MAGISTRATE POSITION FOR CERTAIN CODE
ENFORCEMENT PROCEEDINGS; PROVIDING FOR
ORDINANCES IN CONFLICT, REPEALER,
CODIFICATION, SEVERABILITY, AND AN EFFECTIVE
DATE.**

WHEREAS, pursuant to Section 162.03(2), Florida Statutes, a charter municipality may,
by ordinance, adopt an alternate code enforcement system that gives code enforcement boards or
special magistrates designated by the local governing body, or both, the authority to hold
hearings and assess fines against violators of the respective county or municipal codes and
ordinances;

WHEREAS, pursuant to Section 162.03(2), Florida Statutes, a special magistrate shall
have the same status as a code enforcement board;

WHEREAS, Chapter 14 of the Village's Land Development Code created a code
compliance board to preside over the Village's code enforcement proceedings;

WHEREAS, Chapter 15 of the Village's Land Development Code provides enforcement
guidelines for code compliance issues;

WHEREAS, the Village Commission is desirous to also utilize a special magistrate for
certain code enforcement proceedings in the Village;

WHEREAS, on September 10, 2019, the Village Manager recommended the Village
engage a special magistrate to preside over Village code enforcement proceedings;

1 **WHEREAS**, on October 1, 2019, the Village Commission had a preliminary discussion
2 during its regular commission meeting about potentially adding a special magistrate authority for
3 certain code enforcement proceedings;

4 **WHEREAS**, on October 17, 2019, the Village Commission held a special commission
5 meeting to receive resident comments regarding, and discuss the potential for codifying,
6 amendments to the Village's Land Development Code to provide for a special magistrate in
7 certain code enforcement proceedings;

8 **WHEREAS**, on October 24, 2019, the Village Commission held a special commission
9 meeting to have a public hearing on, and first reading of, the proposed ordinance;

10 **WHEREAS**, on October 24, 2019, the proposed ordinance passed on its first reading;

11 **WHEREAS**, on October 25, 2019, the Village advertised the second reading and public
12 hearing date for the proposed enactment of the ordinance in the Daily Business Review (ad. no.
13 0000433955-01) in compliance with Section 166.041(3)(a), Florida Statutes;

14 **NOW, THEREFORE, BE IT ORDAINED BY THE VILLAGE COMMISSION OF**
15 **THE VILLAGE OF BISCAYNE PARK, FLORIDA, AS FOLLOWS:**

16 **Section 1. Ratification.** The foregoing "Whereas" clauses are hereby ratified and
17 confirmed as being true and correct and are hereby made a specific part of this Ordinance upon
18 adoption hereof.

19 **Section 2. Land Development Code Amended.** Chapters 14 and 15 of the Land
20 Development Code of the Village of Biscayne Park, Florida shall be amended to read as follows:

21 CHAPTER 14. – SPECIAL MAGISTRATE AND CODE COMPLIANCE
22 BOARD

23
24 14.1. – Special magistrate and ~~C~~code compliance board—Generally.
25

1 14.1.1 Purpose. This chapter sets forth the procedures of governing the
2 special magistrate and the code compliance board. When not expressly provided
3 for in this chapter, article III, section 2-30 of the Biscayne Park Code shall apply.
4

5 14.1.2 Intent. It is the intent of the village to provide an equitable,
6 expeditious, effective, and inexpensive method of enforcing the codes and
7 ordinances in force in the village by granting to the special magistrate and the
8 code compliance board the authority to impose administrative fines and other
9 non-criminal penalties for violation(s) of said codes and ordinances. Any alleged
10 violation of the Code may also be enforced by the Village in any court of
11 competent jurisdiction.
12

13 14.1.3 Composition.
14

15 (a) Special magistrates.
16

17 (1) Appointment. Appointments of special magistrates shall be
18 made by the Village Manager or his or her designee on the basis of
19 experience. Such appointments shall be submitted to the Village
20 Clerk for ratification by the Village Commission. The hiring of a
21 special magistrate must be ratified by a simple majority vote of the
22 Village Commission to become final.
23

24 (2) Authority. Special magistrates shall be authorized to hear
25 and decide cases involving code violations in the same manner as
26 the code compliance board.
27

28 (3) Qualifications. The special magistrate must be a licensed
29 attorney who is a member in good standing with the Florida Bar,
30 who possesses an outstanding reputation for civic pride, integrity,
31 fairness, objectivity, responsibility, and the appropriate legal
32 experience or background. A special magistrate must maintain a
33 professional liability insurance policy with a policy limit deemed
34 acceptable to the Village Manager. A copy of the policy must be
35 presented to the Village Commission for review prior to voting on
36 ratifying the hiring of a special magistrate.
37

38 (4) Term of Appointment. Appointments shall be made for a
39 term of two years. Any special magistrate may be reappointed at
40 the discretion of the village manager, subject to ratification by the
city41 commission. There shall be no limit on the number
of42 reappointments of any individual hearing officer/special master.
A43 determination as to removal or reappointment must be made
for44 each hearing officer/special master at the end of each of his or
her45 two-year term. The village manager shall have authority to
remove46 hearing officers/special masters with or without
cause.

1 Appointments to fill any vacancy shall be for the remainder of the
2 unexpired term

3
4 (5) *Removal.* The Village Manager may remove a special
5 magistrate at any time.

6
7 (b) Code compliance board.

8
9 (1) *Composition.* The five-member board shall be appointed
10 by the village commission.

11
12 (2) *Qualifications; exceptions.* Members of the code
13 compliance board shall be property owners and residents of
14 the Village of Biscayne Park. Residents who are not
15 property owners in the Village of Biscayne Park may be
16 appointed by the village commission by at least a four-
17 fifths super majority vote. Appointments shall be made on
18 the basis of experience or interest and, when possible,
19 include the following individuals: an architect, an attorney
20 a business person, an engineer, a general contractor, a
21 subcontractor and a licensed real estate person.

22
23 14.1.4 (3) *Terms of office.* The initial appointments to the code
24 compliance board and the alternate members shall be as
25 follows:

26
27 (1a) One (1) member appointed for a term of one (1)
28 year.

29
30 (2b) Two (2) members appointed for a term of two (2)
31 years.

32
33 (3c) Two (2) members appointed for a term of three (3)
34 years.

35
36 Thereafter, all appointments shall be made for a term of three (3) years and shall
37 take effect on May 1 of the year the appointment is made. A member may be
38 reappointed upon approval of the village commission. Appointments to fill any
39 vacancy on the code compliance board shall be for the remainder of the unexpired
40 term of office. For an excused absence, a board or committee member must
41 advise the village clerk prior to the meeting of the fact that they will be absent and
42 provide a reason for that absence. The board or committee may vote to excuse the
43 requested absence at the same meeting the board or committee member is absent.
44 The absence, and whether or not the absence is excused or unexcused, is to be
45 reflected in the minutes.
46

1 The members shall serve in accordance with the village Charter and may be
2 suspended and removed for cause as provided in the village code for removal of
3 members of village boards.
4

5 14.1.4 Jurisdiction of special magistrate and code compliance board.
6

7 (a) The special magistrate shall preside over code enforcement
8 proceedings involving:
9

10 (1) Irreparable or irreversible violations. For purposes of this
11 section, "irreparable" or "reversible" violations are those
12 that are incapable of correction, repair or return to an
13 original condition.
14

15 (2) Continuing violations. For purposes of this section,
16 "continuing" violations are those violations which remain
17 uncorrected beyond the prescribed time period for
18 correction contained in the civil violation notice. For each
19 day of continued violation after the time period for
20 correction has run, an additional penalty in the same
21 amount as for the original violation shall be added.
22

23 (3) Repeat violations. For purposes of this section, "repeat"
24 violation means a violation of a provision of a code or
25 ordinance by a person who has been previously found
26 through a code enforcement board or any other quasi-
27 judicial or judicial process, to have violated or who has
28 admitted violating the same provision within 5 years prior
29 to the violation, notwithstanding the violations occur at
30 different locations. For the purposes of this definition, a
31 plea of "No Contest" or "Nolo Contendre" shall be deemed
32 an admission of a violation.
33

34 (4) Uncorrectable violation. For purposes of this section, an
35 "uncorrectable" violation is a violation which cannot be
36 remedied after the violation has been committed because
37 the violation constitutes a single prohibited act rather than
38 an ongoing condition or circumstance. Each reoccurrence
39 of an uncorrectable violation shall constitute a separate
40 violation and shall subject the violator to an additional
41 penalty in the same amount as that prescribed for the
42 original violation. If, however, a violator has been once
43 found guilty of an uncorrectable violation, and causes the
44 same uncorrectable violation to occur a second time, each
45 reoccurrence of the uncorrectable violation by such violator
46 shall constitute a "repeat violation."

- (5) Assessment of fines including costs relating to the prosecution of cases before the special magistrate and/or code compliance board in those cases where the village prevails;
- (6) Assessment of costs;
- (7) Assessment or mitigation of liens upon real property;
- (8) Fine reduction hearings brought at the request of the violator;
- (9) Amnesty hearings. For purposes of this section, "amnesty hearings" shall mean a presentation by the village manager or finance director requesting special magistrate ratification of proposed settlement terms to resolve an outstanding and unpaid fine or lien on the basis that said potential settlement would be in the best interests of the village and its residents;
- (10) Any proceedings involving real property presently owned by a governmental, quasi-governmental, or corporate entity;
- (11) Any proceeding wherein the respondent will be represented by legal counsel;
- (12) Any proceeding involving a violation which carries the potential to impose an initial fine equal to or greater than five thousand dollars and zero cents (\$5,000.00).

(b) The code compliance board shall preside over the following types of code enforcement hearings:

- (1) Hearings involving a first notice of violation, administrative citation, and any other preliminary or routine code compliance matters not specifically delegated to the special magistrate;
- (2) Requests for extensions of time to correct violation(s);
- (3) Any code proceedings not specifically delegated to the special magistrate's jurisdiction shall be within the jurisdiction of the code compliance board.

1 (4) In the event the code compliance board does not meet to
2 hold a monthly hearing, the special magistrate shall preside
3 over all code proceedings that month. The village clerk
4 shall promptly notify both the respondent and the code
5 enforcement officer in writing of any reassignments from
6 the code compliance board's hearing docket to the special
7 magistrate's hearing docket.
8

9 14.1.5 Procedures for code compliance board.
10

- 11 (a) ~~Chairman~~ Chairperson. The members of the code compliance
12 board shall elect a ~~chairman~~ chairperson from among its members.
13
14 (b) Quorum. The presence of three (3) members shall constitute a
15 quorum of the code compliance board.
16
17 (c) Expenses. Members shall serve without compensation, but may be
18 reimbursed for such travel, mileage and per diem expenses as may
19 be authorized by the village commission.
20

21 14.1.6 Counsel. The village attorney shall either be counsel to the code
22 compliance board or shall represent the village by presenting cases before the
23 board, but in no case shall the village attorney serve in both capacities.
24

25 14.1.7 Compliance procedure.
26

- 27 (a) It shall be the duty of the code compliance officer to initiate
28 enforcement proceedings of the various codes; provided, however,
29 no member of the code compliance board shall have the power to
30 initiate such enforcement proceedings.
31
32 (b) Except as provided in subsections (c), (d) and (f), if a violation of
33 the codes is found, the code compliance officer shall notify the
34 violation and give the violator a reasonable time to correct the
35 violation. Should the violation continue beyond the time specified
36 for correction, the code compliance officer shall notify the special
37 magistrate or code compliance board of the charges and request a
38 hearing pursuant to procedure in section 14.1.8. Notice shall be
39 provided pursuant to section 14.1.13.
40
41 (c) If the violation is corrected and then recurs or if the violation is not
42 corrected by the time specified for correction by the code
43 compliance officer, the case may be presented to the special
44 magistrate or code compliance board even if the violation has been
45 corrected prior to the ~~board~~ hearing, and the notice shall so state. If
46 a repeat violation is found, the code compliance officer shall notify

1 the violator but is not required to give violator a reasonable time to
2 correct the violation. The code compliance officer, upon notifying
3 the violator of a repeat violation, shall notify the special magistrate
4 or code compliance board and request a hearing. The special
5 magistrate or code compliance board shall schedule a hearing and
6 shall provide notice pursuant to section 14.1.12. The case may be
7 presented to the special magistrate or code compliance board even
8 if the repeat violation has been corrected prior to the ~~board~~ hearing,
9 and the notice shall so state. "Repeat violation" means a violation
10 of a provision of a code or ordinance by a person who has been
11 previously found, through a special magistrate, code compliance
12 board, or other quasi-judicial or judicial process, to have violated
13 or has admitted violating the same provision within five (5) years
14 prior to the violation.

15
16 (d) If the code compliance officer has reason to believe a violation
17 presents a serious threat to the public health, safety and welfare,
18 the code compliance officer may proceed directly to the procedure
19 in subsection 14.1.7(b) without notifying the violator.

20
21 (e) If the owner of the property which is subject to an enforcement
22 proceeding before a special magistrate or code compliance board,
23 or if the court, transfers ownership of such property between the
24 time the initial pleading was served and the time of the hearing,
25 such owner shall:

26
27 (1) Disclose, in writing, the existence and the nature of the
28 proceeding to the prospective transferee.

29
30 (2) Deliver to the prospective transferee a copy of the
31 pleadings, notices, and other materials relating to the code
32 enforcement proceeding received by the transferor.

33
34 (3) Disclose, in writing, to the prospective transferee that the
35 new owner will be responsible for compliance with the
36 applicable code and with orders issued in the code
37 enforcement proceeding.

38
39 (4) File a notice with the code compliance department of the
40 transfer of the property, with the identity and address of the
41 new owner and copies of the disclosures made to the new
42 owner, within five (5) days after the date of the transfer. A
43 failure to make the disclosures described in this subsection
44 before the transfer creates a rebuttable presumption of
45 fraud. If the property is transferred before the hearing, the
46 proceeding shall not be dismissed, but the new owner shall

1 be provided a reasonable period of time to correct the
2 violation before the hearing is held.
3

4 (f) The village commission finds that aesthetics are paramount to
5 maintaining an attractive and marketable community. The
6 violations enumerated below severely damage the aesthetics and
7 livability of the community immediately upon their commission.
8 Such damage cannot be repaired or reversed. Therefore, the village
9 commission hereby deems a violation of this section an irreparable
10 and irreversible violation. As a result, the Village of Biscayne Park
11 adopts supplemental and alternative code enforcement procedures
12 pursuant to F.S. §§ 162.13 and 162.22, as amended, to authorize
13 code compliance officers to issue administrative citations for
14 review before the special magistrate or code compliance board. A
15 code compliance officer shall have the sole discretion in
16 determining whether to issue an administrative citation or a notice
17 of violation for the following offenses:
18

- 19 (1) Open feeding that causes a gathering of more than four (4)
20 dogs or four (4) cats or combination thereof totaling four
21 (4), in violation of section 3-4 of the code;
22
- 23 (2) Excessive barking or howling of dogs, in violation of
24 section 3-21 of the code;
25
- 26 (3) Parking not on an approved surface where there is an
27 approved parking surface as required by section 5.6.1 of the
28 Land Development Code;
29
- 30 (4) Garbage cans and trash receptacles not placed behind face
31 of building and screened from view, in violation of section
32 6.3.2 of the Land Development Code;
33
- 34 (5) Domestic trash and recycling materials placed at the
35 property line and/or not removed under the requirements of
36 section 6.3.3 of the Land Development Code;
37
- 38 (6) Trees and garden refuse placed at the property line and/or
39 not removed under the requirements of section 6.3.4 of the
40 Land Development Code;
41
- 42 (7) Overgrown grass in violation of section 8.4.1 of the Land
43 Development Code;
44
- 45 (8) Offensive noise, in violation of section 10-1 of the code.
46

1 In the issuance of an administrative citation, the following procedures shall be
2 used:

3
4 (1) For the offenses enumerated above, a code compliance officer
5 who, upon personal investigation, has reasonable cause to believe
6 that there is a violation, shall have the authority to issue an
7 administrative citation to the alleged violator and/or record owner
8 of the subject property.
9

10 (2) The administrative citation issued shall be in a form approved by
11 the village manager and shall contain:

- 12
13 a. The date and time of issuance.
14
15 b. The name and address of the person to whom the
16 administrative citation is issued.
17
18 c. The facts constituting reasonable cause.
19
20 d. The section of the code that is violated.
21
22 e. The name of the code compliance officer.
23
24 f. The procedure for the person to follow in order to pay or
25 contest the administrative citation.
26
27 g. The penalty, including administrative costs, if the person
28 elects to contest the administrative citation and is found in
29 violation.
30
31 h. The penalty if the person elects to pay the administrative
32 citation.
33
34 i. A conspicuous statement that if the person fails to pay the
35 penalty within the time allowed, or fails to appear before
36 the special magistrate or code compliance board, that the
37 person shall be deemed to have waived his or her right to
38 contest the administrative citation and that, in such case, a
39 final order and/or judgment may be entered against the
40 person up to five hundred dollars (\$500.00).
41

42 (3) After issuing the administrative citation, the code compliance officer
43 shall deposit an original with the village manager or their designee.
44

45 (4) A person who has been served with an administrative citation shall
46 may elect either to:

- 1
2 a. Correct the violation immediately and pay within fourteen (14)
3 days of service of the administrative citation the penalty in the
4 manner indicated on the administrative citation; or
5
6 b. Request a hearing before the special magistrate or code compliance
7 board, depending on the applicable jurisdiction.
8

9 14.1.8 Conduct of hearing.
10

11 ~~(a) — The chairman of the code compliance board may call hearings of the~~
12 ~~board, and hearings may also be called by written notice signed by at least three~~
13 ~~(3) members of the code compliance board. The board, at any hearing, may set a~~
14 ~~future hearing date. The board shall attempt to convene no less frequently than~~
15 ~~once every two (2) months, but it may meet more or less often as the demand~~
16 ~~necessitates. Minutes shall be kept of all hearings by the board, and all hearings~~
17 ~~and proceedings shall be open to the public. The village shall provide clerical and~~
18 ~~administrative personnel as may be reasonably required by the board for the~~
19 ~~proper performance of its duties.~~
20

21 ~~(b) — Each case before the code compliance board shall be presented by a~~
22 ~~code compliance officer appointed by the village for that purpose.~~
23

24 ~~(c) — The special magistrate and code compliance board shall proceed to~~
25 ~~hear the cases on the agenda for that day. All testimony shall be under oath and~~
26 ~~shall be recorded. The board shall take testimony from the code compliance~~
27 ~~officer, the alleged violator, and any witnesses called. Formal rules of evidence~~
28 ~~shall not apply, but fundamental due process shall be observed and govern said~~
29 ~~proceedings.~~
30

31 ~~(d) — At the conclusion of the hearing, the special magistrate and code~~
32 ~~compliance board shall issue findings of fact, based on evidence recorded and~~
33 ~~conclusions of law, and shall issue an order affording the proper relief consistent~~
34 ~~with powers granted herein. The finding shall be by motion approved by a~~
35 ~~majority of those present and voting, except that at least three (3) members of the~~
36 ~~code compliance board must vote for the action to be official. The order may~~
37 ~~include a notice that it must be complied with by a specified date and that a fine~~
38 ~~may be imposed if the order is not complied with by said date. A certified copy of~~
39 ~~such order may be recorded in the public records of the county and shall~~
40 ~~constitute notice to any subsequent purchasers, successors in interest, or assigns if~~
41 ~~the violation concerns real property, and the findings therein shall be binding~~
42 ~~upon the violator and, if the violation concerns real property, any subsequent~~
43 ~~purchasers, successors in interest, or assigns. If an order is recorded in the public~~
44 ~~records pursuant to this subsection and the order is complied with by the date~~
45 ~~specified in the order, the code compliance board shall issue an order~~

1 ~~acknowledging compliance that shall be recorded in the public records. A hearing~~
2 ~~is not required to issue such an order acknowledging compliance.~~
3

4 (a) Upon request of the code inspector, or at such other times as may
5 be necessary, the special magistrate or chair of the code
6 compliance board may call a code enforcement hearing; a hearing
7 also may be called by written notice signed by at least two
8 members of the code compliance board. Minutes shall be kept of
9 all code enforcement hearings, and all hearings and proceedings
10 shall be open to the public. The village commission shall provide
11 clerical and administrative personnel as may be reasonably
12 required by the special magistrate or code compliance board for the
13 proper performance of code enforcement duties.
14

15 (b) Each case before the special magistrate or code compliance board
16 shall be presented either (1) a member of the Village
17 administrative staff, or (2) the Village Attorney. The Village
18 Attorney shall only present cases in the event of unavailability of
19 staff, or if a matter involves legal issues requiring argument of
20 counsel as determined by the Village Manager. If the Village
21 prevails in prosecuting a case before the special magistrate or
22 enforcement board, it shall be entitled to recover all costs incurred
23 in prosecuting the case before the board and such costs may be
24 included in the lien authorized under s. 162.09(3).
25

26 (c) The special magistrate or code compliance board shall proceed to
27 hear the cases on the agenda for that day. All testimony shall be
28 under oath and shall be recorded. The enforcement board shall take
29 testimony from the code inspector and alleged violator. Formal
30 rules of evidence shall not apply, but fundamental due process
31 shall be observed and shall govern the proceedings.
32

33 (d) At the conclusion of the hearing, the special magistrate or code
34 compliance board shall issue written findings of fact, based on
35 evidence of record and conclusions of law, and shall issue an order
36 affording the proper relief consistent with powers granted herein.
37 The finding shall be by motion approved by a majority of those
38 members present and voting, except that at least three members of
39 the code compliance board, must vote in order for the action to be
40 official. The order may include a notice that it must be complied
41 with by a specified date and that a fine may be imposed and, under
42 the conditions specified in s. 162.09(1), the cost of repairs may be
43 included along with the fine if the order is not complied with by
44 said date. A certified copy of such order may be recorded in the
45 public records of Miami-Dade County, Florida and shall constitute
46 notice to any subsequent purchasers, successors in interest, or

1 assigns if the violation concerns real property, and the findings
2 therein shall be binding upon the violator and, if the violation
3 concerns real property, any subsequent purchasers, successors in
4 interest, or assigns. If an order is recorded in the public records
5 pursuant to this subsection and the order is complied with by the
6 date specified in the order, the special magistrate or code
7 compliance board must issue an affidavit acknowledging
8 compliance that shall be recorded in the public records of Miami-
9 Dade County, Florida. A hearing is not required to issue such an
10 affidavit acknowledging compliance.

11
12 14.1.9 Powers of the special magistrate and code compliance board. The
13 special magistrate and code compliance board shall have the power to:

- 14
15 (1) Adopt rules for the conduct of its hearings.
16
17 (2) Subpoena alleged violators and witnesses to its hearings.
18 Subpoenas may be served by the police department.
19
20 (3) Subpoena evidence to its hearings.
21
22 (4) Take testimony under oath.
23
24 (5) Issue orders having the force of law commanding whatever steps
25 are necessary to bring a violation into compliance.
26

27 14.1.10 Fines; liens.
28

29 (a) The special magistrate and code compliance board, pursuant to their
30 respective authority delegated herein, upon notification by the code compliance
31 officer that a previous order of the board has not been complied with by the set
32 time, or finds a person to be a repeat violator under subsection (c), may order the
33 violator to pay a fine in an amount specified in this section for each day the
34 violation continues past the date set by the special magistrate or code compliance
35 board for compliance or, in the case of a repeat violation, for each day the repeat
36 violation continues past the date of notice to the violator of the repeat violation. If
37 a finding of a violation or a repeat violation has been made as provided in this
38 part, a hearing shall not be necessary for issuance of the order imposing the fine.
39

40 ~~An "uncorrectable violation" is a violation which cannot be remedied after~~
41 ~~the violation has been committed because the violation constitutes a single~~
42 ~~prohibited act rather than an ongoing condition or circumstance. Each~~
43 ~~reoccurrence of an uncorrectable violation shall constitute a separation violation~~
44 ~~and shall subject the violator to an additional penalty in the same amount as that~~
45 ~~prescribed for the original violation. If, however, a violator has been once found~~
46 ~~guilty of an uncorrectable violation, and causes the same uncorrectable violation~~

1 to occur a second time, each recurrence of the uncorrectable violation by such
2 violator shall constitute a "repeat violation."
3

4 "Continuing violations" are those violations which remain uncorrected
5 beyond the reasonable time period for correction contained in either the civil
6 violation notice or the final order of the code compliance board, whichever is
7 applicable. For each day of continued violation after the time for correction has
8 run, an additional penalty in the same amount as that prescribed for the original
9 violation shall be added.
10

11 A "repeat violation" is a recurring violation of an ordinance by a violator
12 who has previously been guilty of the same violation within the last five (5) years.
13 In the case of correctable violations, a repeat violation can occur only after
14 correction of the previous violation has been made. For the first repeat violation,
15 the amount of the civil penalty shall be double the amount of penalty prescribed
16 for the original violation.
17

18 (b) Amount of fine.
19

20 (1) The fine amount(s) are referenced in a resolution kept on file by the
21 village clerk.
22

23 (2) In determining the amount of the fine, if any, the special magistrate
24 or code compliance board shall consider the following factors:
25

- 26 a. The gravity of the violation;
27
28 b. Any actions taken by the violator to correct the violation; and
29
30 c. Any previous violations committed by the violator.
31
32 (c) Reduction of fine imposed pursuant to this section.
33

34 (1) The special magistrate and code compliance board, pursuant to their
35 respective authority delegated herein, is hereby delegated the authority to may
36 hear requests for reduction of fines pursuant to this section and make the final
37 decision on behalf of the village.
38

39 (2) For all requests for reduction of fine, the code compliance officer
40 shall submit a written recommendation to the special magistrate code compliance
41 board. In formulating the recommendation, the code compliance officer shall
42 consider criteria, which includes, but is not limited to, the following:
43

- 44 a. The cooperation of the respondent petitioner seeking reduction,
45 including whether the respondent petitioner had appeared before

1 the special magistrate or code compliance board at the original
2 hearing;

3
4 b. The documentation provided ~~by the respondent~~ in support of the
5 fine reduction request;

6
7 c. Whether the ~~respondent~~ petitioner seeking reduction has new
8 evidence or information which could not be provided at the
9 original hearing;

10
11 d. Whether there was any extraordinary hardship which existed or
12 currently exists;

13
14 e. Whether the ~~respondent~~ petitioner seeking reduction is presently
15 ~~has come~~ into compliance with the prior order of the special
16 magistrate and/or code compliance board;

17
18 f. The number of days that the violation existed;

19
20 g. Whether the ~~respondent~~ petitioner seeking reduction ~~has been~~ was
21 previously deemed a repeat violator by order of the special
22 magistrate and/or code compliance board;

23
24 ~~h. Whether the property is homestead or non-homestead property;~~
25 ~~and~~

26
27 ~~i.h.~~ The total administrative cost to the village for the handling of the
28 case, which cost will be inclusive of staff time and recording and
29 release of lien fees.

30
31 (3) When issuing a determination for a fine reduction request, the ~~The~~
32 ~~special magistrate code compliance board~~ shall consider the same criteria as the
33 code compliance officer.

34
35 (4) The special magistrate ~~code compliance board~~ shall not waive
36 administrative costs incurred by the ~~local government~~ Village in enforcing its
37 codes. In addition, the ~~code compliance board and the administrative panel~~ special
38 magistrate shall not waive costs of any repairs incurred by the Village ~~local~~
39 ~~government~~.

40
41 (d) A certified copy of an order imposing a fine, or a fine plus repair
42 costs, may be recorded in the public records of Miami-Dade County, Florida and
43 thereafter shall constitute a lien against the land on which the violation exists, or,
44 if the violator does not own the land, upon any other real or personal property
45 owned by the violator. Upon petition to the circuit court, such order shall be
46 enforceable in the same manner as a court judgment by the sheriffs of this state,

1 including execution and levy against the personal property of the violator but such
2 order shall not be deemed otherwise to be a judgment of a court except for
3 enforcement purposes. A fine imposed pursuant to this part shall continue to
4 accrue until the violator comes into compliance or until judgment is rendered in a
5 suit to foreclose on a lien filed pursuant to this section, whichever occurs first.
6 After three (3) months from the filing of any such lien which remains unpaid, the
7 special magistrate or code compliance board may authorize the village attorney to
8 initiate court proceedings to foreclose upon the lien. No lien created pursuant to
9 the provisions of this chapter may be foreclosed on real property, which is a
10 homestead under the Florida Constitution, Art. X, § 4. For purposes of this
11 section, there is a rebuttable presumption that a residential property for which a
12 homestead exemption for taxation was granted according to the certified rolls of
13 the latest assessment by the county property appraiser, before the filing of the
14 foreclosure action, is an owner-occupied residential property.
15

16 14.1.11 Duration of lien.
17

18 No lien provided by ~~the Code Compliance Boards Act~~ for herein shall continue to
19 encumber real property for a longer period than twenty (20) years after the
20 certified copy of an order imposing a fine has been recorded, unless within that
21 time an action to foreclose on the lien is commenced in a court of competent
22 jurisdiction. In an action to foreclose on the lien, the prevailing party is entitled to
23 recover all costs, including a reasonable attorney's fee, that it incurs in the
24 foreclosure. The continuation of the lien effected by the commencement of the
25 action shall not be good against creditors or subsequent purchasers for valuable
26 consideration without notice, unless a notice of lis pendens is recorded.
27

28 14.1.12 Appeal.
29

30 (a) Pursuant to Section 162.11, Florida Statutes, An an aggrieved
31 party, including the Village, may appeal a final order of the special
32 magistrate or code compliance board to the circuit court Circuit
33 Court of the Eleventh Judicial Circuit in and for Miami-Dade
34 County, Florida. Such an appeal shall not be a hearing de de novo,
35 but shall be limited to appellate review of the record created before
36 the special magistrate or code compliance board.
37

38 (b) Pursuant to the applicable Florida Rules of Appellate Procedure,
39 the following documents must be filed within thirty (30) calendar
40 days of rendition of the order to be appealed:
41

42 (1) Original notice of appeal with the Village Clerk;

43 (2) File a copy of the notice of appeal and order being
44 appealed, accompanied with the requisite court filing fees,
45 with the Miami-Dade County Clerk of the Court.
46

1
2 (c) The Village Clerk shall process any requests for a copy of the
3 record created before the special magistrate or code compliance
4 board. The Village may assess a reasonable charge for the
5 preparation and transmission of the record to be paid by the
6 petitioner in accordance with Section 119.07, Florida Statutes.
7

8 14.1.13 Notice and procedures.
9

10 (a) All notices required by this part shall be provided to the alleged
11 violator by:

12
13 (1) Certified mail, return receipt requested, provided if such
14 notice is sent under this subsection to the owner of the
15 property in question at the address listed in the tax
16 collector's office for tax notices, and at any other address
17 provided to the village by such owner and is returned as
18 unclaimed or refused, notice may be provided by posting as
19 described in subsections (b)(1) and (2) below, and by first
20 class mail directed to the addresses furnished to the ~~local~~
21 ~~government~~ Village with a properly executed proof of
22 mailing or affidavit confirming the first class mailing; or
23

24 (2) Hand delivery by the sheriff or other law enforcement
25 officer, code compliance officer, or other person designated
26 by the ~~local governing body~~ Village; or
27

28 (3) Leaving the notice at the violator's usual place of residence
29 with any person residing therein who is above fifteen (15)
30 years of age and informing such person of the contents of
31 the notice.
32

33 (b) (1) In lieu of notice as described in subsection (a), such notice
34 may be posted at least ten (10) days prior to the hearing, or
35 prior to the expiration of any deadline contained in the
36 notice, in at least two (2) locations, one of which shall be
37 the property upon which the violation is alleged to exist and
38 the other of which shall be at the Village Hall.
39

40 (2) Proof of posting shall be by affidavit of the person posting
41 the notice, which affidavit shall include a copy of the notice
42 posted and the date and places of its posting.
43

44 (c) Evidence that an attempt has been made to hand deliver or mail
45 notice as provided in subsection (a), together with proof of notice
46 or posting as provided in subsection (b), shall be sufficient to show

1 that the notice requirements of this chapter have been met, without
2 regard to whether or not the alleged violator actually received such
3 notice.
4

5 14.1.14 Enforcement procedures by code compliance officer.
6

- 7 (a) For the purposes of this chapter, a "code compliance officer" is
8 defined to be any agent or employee of the village or Miami-Dade
9 County whose duty is to assure the enforcement of and compliance
10 with the village code, the Florida Building Code, or Miami-Dade
11 County, as applicable. Prior to being provided the authority to
12 initiate enforcement proceedings under this chapter, a code
13 compliance officer shall be required to successfully complete a
14 criminal background investigation as prescribed by administrative
15 order of the county manager. Subject to the requirements of section
16 8CC-11, a "code compliance officer" is also defined to be any
17 agent or employee of a municipality who has been authorized
18 pursuant to that section to assure code compliance. Municipal
19 employees shall also be required to successfully complete a
20 criminal background investigation prior to being provided
21 authority to initiate enforcement proceedings under this chapter.
22
- 23 (b) For the purposes of this chapter, "violators" shall be deemed to be
24 those persons or entities legally responsible for the violation of the
25 village's Code of Ordinances, applicable provision of the Miami-
26 Dade County Code, or the Florida Building Code.
27
- 28 (c) A code compliance officer who finds a violation of an ordinance
29 shall determine a reasonable time period within which the violator
30 must correct the violation. This determination shall be based on
31 considerations of fairness; practicality; ease of correction; ability to
32 correct; severity of violation; nature, extent and probability of
33 danger or damage to the public; and other relevant factors relating
34 to the reasonableness of the time period prescribed. A time for
35 correction need not be specified if the violation is deemed to be an
36 uncorrectable violation.
37
- 38 (d) Service shall be effected by delivering the civil violation notice to
39 the violator or his agent, or by leaving the civil violation notice at
40 the violator's usual place of abode with any person residing therein
41 who is fifteen (15) years of age or older and informing that person
42 of its contents. If such service cannot be effected, the notice may
43 be sent by certified mail, return receipt requested, or by posting of
44 the civil violation notice in a conspicuous place on the premises or
45 real property upon which the violation has been observed or by
46 mailing to or posting the civil violation notice at the property

owner's mailing address as listed in the tax records of Miami-Dade County. Such posting of the notice or violation shall be deemed proper service, and the time for compliance, stated in the notice, shall commence with the date such notice is posted.

(e) A code compliance officer is authorized to record in the public record the civil violation notice or a notice of violation which is based upon the civil violation notice. The recording of the civil violation or a notice of violation under this section shall not act as or be a lien on the property and shall not act as a notice of a lien on the property but shall merely act as public notice of the existence of the violation.

(f) A code compliance officer must have, at a minimum, a Florida Association of Code Enforcement (F.A.C.E.) Level 1 certification within one (1) year of hire.

CHAPTER 15. - ENFORCEMENT

15.1. - Generally.

15.1.1 Enforcement of Land Development Code. The planning board, special magistrate, and the code compliance board shall enforce the Land Development Code.

15.2. - Building official.

15.2.1 Designation. The building official shall be designated by the appointing authority, whatever the official title, to enforce the provisions of the Florida Building Code and other applicable laws; provided, the official may act with the aid and through authorized assistants.

15.2.2 Authority. The building official is hereby authorized and directed to interpret and enforce all of the provisions of this code subject to the powers vested in the planning board and the code compliance board.

15.3. - Violations and general penalty.

15.3.1 General penalty. Whenever in this code or in any ordinance of the village any act is prohibited or is made or declared to be unlawful or an offense, or whenever in such code or ordinance the doing of any act is required or the failure to do any act is declared to be unlawful, where no specific penalty is provided therefor, the violation of any such provision of this code or any ordinance shall be punished by a fine not to exceed five hundred dollars (\$500.00), or imprisonment for a term not exceeding sixty (60) days, or by both a

1 fine and imprisonment. Each day violation of any provision of this code or of any
2 ordinance shall continue shall constitute a separate offense.
3

4 15.3.2 Continuation of violation. In addition to the penalties
5 hereinabove provided, any condition caused or permitted to exist in violation of
6 any of the provisions of this code or any ordinance shall be deemed a public
7 nuisance and may be, by the village, abated as provided by law, and each day that
8 such condition continues shall be regarded as a new and separate offense.
9

10 15.4. - Other penalties and remedies.
11

12 15.4.1 Civil remedies. If any building or structure is erected,
13 constructed, reconstructed, altered, repaired, or maintained or any building,
14 structure, land, or water is used in violation of this code, the village, through the
15 village attorney, may institute any appropriate civil action or proceedings in any
16 court to prevent, correct, or abate the violation.
17

18 **Section 3. Severability.** Should any section, provision, paragraph, sentence, clause of
19 word of this Ordinance or portion hereof be held or declared by any court of competent jurisdiction
20 to be unconstitutional or invalid, in part or application, it shall be considered as eliminated and shall
21 not affect the validity of the remaining portions or applications of this Ordinance.

22 **Section 4. Codification.** It is the intention of the Village Commission of the Village of
23 Biscayne Park, that the provisions of this Ordinance shall become and made a part of the Land
24 Development Code of the Village of Biscayne Park, Florida, and that the Sections of this Ordinance
25 may be renumbered, re-lettered and the word "Ordinance" may be changed to "Section," "Article"
26 or other word or phrase in order to accomplish such intention.

27 **Section 5. Conflicts.** That all Ordinances or parts of Ordinances, Resolutions or parts
28 thereof in conflict herewith, be and the same are hereby repealed to the extent of such conflict.

29 **Section 6. Effective Date.** This Ordinance shall become effective immediately upon its
30 passage and adoption, in accordance with the Village Charter.

31 The foregoing Ordinance was offered by Mayor Truppman who moved its adoption.

The motion was seconded by Vice-Mayor Tudor and upon being put to a vote, the vote was as follows:

PASSED AND ADOPTED upon first reading this 24th day of October, 2019.


PASSED AND ADOPTED upon second reading this 3rd day of December, 2019.

The foregoing ordinance upon being put to a vote, the vote was as follows:

Tracy Truppman, Mayor

Mayor Truppmann: Yes
Vice Mayor Tudor Yes
Commissioner Samaria: No

Attest:


Roseann Prado, Village Clerk

Approved as to form:


Rebecca A. Rodriguez, Village Attorney